

The Flinn Report

Illinois

Regulation

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Joint Committee on Administrative Rules
Illinois General Assembly

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Issue 41

Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

Proposed Regulations

STATE AUDITS

The AUDITOR GENERAL adopted amendments to "Code of Regulations" (74 Ill Adm Code 420; 32 Ill Reg 8194), effective 10/10/08, allowing information gathered in audits to be disclosed by the Auditor General or by contractors the Auditor General hires if a court orders disclosure or if the custodian of the record consents to release of the information. Also, "government agencies with investigative powers" are added to the list of entities to whom the Auditor General may release confidential information gathered in the course of an ongoing audit, inquiry, or investigation. The rulemaking also incorporates by reference updated versions of government auditing standards.

Questions/requests for copies: Rebecca Patton, Office of the Auditor General, 740 E. Ash St., Springfield IL 62703, 217/782-6698, TTY 888/261-2887.

amendments to "Procurement Rules of the Chief Procurement Officer for Public Institutions of Higher Education" (44 Ill Adm Code 526; 32 Ill Reg 9101), effective 9/24/08, to raise the small purchase maximum amount below which there is an exemption from the source selection restrictions of the Illinois Procurement Code from \$25,000 to \$50,000 for supplies and services (other than artistic and professional) and from \$30,000 to \$70,000 for construction. These new limits are subject to consumer price index changes announced each year. Small businesses seeking contracts with public colleges and universities will be affected.

Questions/requests for copies: Bob Baker, 208 Henry Adm. Bldg., 506 S. Wright St., Urbana IL 61801, 217/333-1352; Fax 217/239-6760, e-mail: rbaker@uillinois.edu

COMMUNITY COLLEGES

The ILLINOIS COMMUNITY COLLEGE BOARD adopted amendments to "Administration of the Illinois Public Community College Act" (23 Ill Adm Code 1501; 32 Ill Reg 1029), effective 9/23/08, removing the requirement that

(cont'd next page)

ELECTRICITY BROKERS

The ILLINOIS COMMERCE COMMISSION proposed a new Part titled "Licensure of Retail Electric Agents, Brokers and Consultants" (83 Ill Adm Code 454; 32 Ill Reg 16291) that implements Public Act 95-679. The statute and the Part establish licensing requirements for persons engaged in the procurement or sale of retail electricity supplies for third parties. The rule sets out managerial, financial, and technical requirements for licensure; required customer records and information; reporting requirements; treatment of erroneous or defective reports; complaint procedures; and ICC oversight. Those affected by this rulemaking include electric utilities and alternative retail electric suppliers that are small businesses.

Questions/requests for copies/comments through 11/24/08: Elizabeth Rolando, Chief Clerk, ICC, 527 E. Capitol Ave., Springfield IL 62701, 217/782-7434.

WATER QUALITY STANDARDS

The POLLUTION CONTROL BOARD proposed an amendment to "Water Use Designations and Site-Specific Water Quality Standards" (35 Ill Adm Code 303; 32 Ill Reg 16303) that authorizes alternative water quality standards for boron along Spring Creek below the discharge point of the

(cont'd page 4)

HIGHER ED PROCUREMENT

The CHIEF PROCUREMENT OFFICER FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION adopted

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

community college students pass an examination regarding patriotism, principles of representative government, use and display of the American flag, and the American method of voting. ICCB states the rule was burdensome to students who had already taken U.S. Constitution tests at out-of-state high schools or during the process of becoming naturalized citizens. (Graduates of Illinois high schools or GED programs, who must pass a similar test, were deemed to have fulfilled this requirement.) The rulemaking also removes provisions allowing community colleges to request a program review and evaluation cycle of longer than 5 years.

Questions/requests for copies: Cherie VanMeter, ICCB, 401 E. Capitol Ave., Springfield IL 62701-1711, 217/785-0053, Fax 217/524-6195.

DRYCLEANERS

DRYCLEANER ENVIRONMENTAL RESPONSE TRUST FUND COUNCIL OF ILLINOIS adopted amendments for "General Program" (35 Ill Adm Code 1500; 32 Ill Reg 6268), effective 9/26/08, to require drycleaners to maintain all records required to obtain a license from the Council or evidence relating to appeals of the Council's final decisions for at least 3 years after the date of initial licensure, license renewal, or issuance of a No Further Remediation letter. Drycleaners who submit other data or documents under these regulations must maintain all evidence directly pertinent to the submitted materials for a specified period of time. The amendments strike the requirement that, if a drycleaner is making a claim for reimbursement of remedial action expenses at an active facility, he or she must provide proof that all petroleum-based drycleaning solvents were delivered to the facility by means of a direct coupled delivery system with proper vent lines for receiving the product. Finally, the amendments prescribe the manner in which insurance claims against the trust fund must be settled. Those affected by this rulemaking include

owners and operators of drycleaning businesses.

Questions/requests for copies: H. Patrick Eriksen, Drycleaner Environmental Response Trust Fund Council of Illinois, P.O. Box 480, Bensenville IL 60106-0480, 630/741-0022.

SCHOOL DISTRICTS

The STATE BOARD OF EDUCATION adopted amendments to "Requirements for Accounting, Budgeting, Financial Reporting, and Auditing" (23 Ill Adm Code 100; 32 Ill Reg 7051), effective 9/24/08, that implement a new public act and add information about 2 funding sources. Public Act 95-675 establishes the school facility occupation tax as an additional source of revenue for school districts. Therefore, this rulemaking adds the tax as a fund source for debt service and capital projects funds and as another local revenue account. In addition, the "Grow Your Own Teacher Education Initiative" is added as another State revenue account, while "Safe Routes to Schools" is added as another federal revenue account. The rulemaking also updates materials incorporated by reference, requires written policies concerning use of school district credit cards to reflect how financial or material rewards or rebates are accounted for, and updates account names. Non-profit groups that operate charter schools may be among those affected by this rulemaking.

SCHOOL RECORDS

SBE also adopted amendments to "Student Records" (23 Ill Adm Code 375; 32 Ill Reg 7271), effective 9/29/08, that expand the definitions of "student permanent record" and "official transcript of scholastic records" to include the unique identifier assigned to a student by SBE's electronic Student Information System (SIS). The SIS will allow certain data from elementary and secondary schools (e.g., student transcripts) to be transmitted electronically to other grade and high schools, as well as to

postsecondary schools and employers linked to the system. SBE states that the student's unique identifier on transcripts or scholastic records does not allow access to all student records that are stored on SIS, but rather allows only the "merging of data" at the postsecondary level with the information stored in SIS for the conduct of research and analysis. Any merging of data will conform to State and federal privacy protection laws, according to SBE. Those affected by this rulemaking include businesses that will have more potential access to prospective employees' student records.

Questions/requests for copies of the 2 SBE rulemakings above: Debbie Vespa (217/785-8779) for Part 100 and Darren Reisberg (217/782-5270) for Part 375, SBE, 100 N. First St., S-493, Springfield IL 62777-0001.

HUMAN RIGHTS

The DEPARTMENT OF HUMAN RIGHTS adopted amendments to "Procedures Applicable to All Agencies" (44 Ill Adm Code 750; 32 Ill Reg 8536), effective 9/23/08, changing the word "handicap" to "disability" and adding discrimination on the basis of citizenship status, military status, and sexual orientation to the definition of discrimination.

Questions/requests for copies: David T. Rothal, DHR, 100 W. Randolph, Ste. 10-100, Chicago IL 60601, 217/814-6257, TTY 312/263-1579.

HORSE RACING

The ILLINOIS RACING BOARD adopted an amendment to rules titled "Illinois Racing Board" (11 Ill Adm Code 200, 32 Ill Reg 8547), effective 10/1/08, in order to address deficiencies noted by both State and federal courts in the Board's rules allowing warrantless searches on racetrack property. Topics covered include persons and property that may be searched, the basis for searches, release of claim or possible actions for damages, delegation of IRB authority

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to conduct inspections and searches to the Illinois State Police, and the presence of IRB personnel during searches. Dormitory rooms are specifically excluded from warrantless searches. Since 1st Notice, a provision specifying that searches could take place only between the hours of 7:00 a.m. and 1:00 a.m. has been deleted. The Board also adopted amendments to "Security and Admissions" (11 Ill Adm Code 1325; 32 Ill Reg 8552) and "Regulations for Meetings (Thoroughbred)" (11 Ill Adm Code 1424; 32 Ill Reg 8556), both effective 10/1/08, repealing obsolete provisions governing warrantless searches.

Questions/requests for copies of the 3 IRB rulemakings above: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

DRIVER'S LICENSES

The SECRETARY OF STATE adopted an amendment to rules titled "Illinois Safety Responsibility Law" (92 Ill Adm Code 1070; 32 Ill Reg 8890), effective 9/25/08, establishing a procedure for suspending an individual's driver's license or permit when the person becomes delinquent in making child-support payments ordered via an administrative order of child support. The Department of Healthcare and Family Services must certify by electronic submission to SOS that the individual is at least 90 days delinquent in making child-support payments. The certification must include the person's name, address, birth date, gender, and case number. SOS will reinstate an individual's driver's license or permit only upon receiving by electronic submission a certification of compliance from HFS stating that the suspended individual has either paid the delinquent child-support payments or has made arrangements to do so. Electronic submissions received by SOS that contain insufficient data or

do not comply with the Illinois Vehicle Code will be rejected and returned to HFS.

Questions/requests for copies: Arlene J. Pulley, SOS, Driver Services Dept., 2701 S. Dirksen Pkwy., Springfield IL 62723, 217/557-4462.

UNIVERSITY RETIREMENT

The STATE UNIVERSITIES RETIREMENT SYSTEM (SURS) adopted amendments to "Universities Retirement" (80 Ill Adm Code 1600; 32 Ill Reg 7280), effective 9/25/08. Terms used throughout the Part are defined in accordance with statute and SURS policy. Signature requirements for SURS contracts are revised to permit the executive director to sign investment management contracts or amendments for agreements with fiduciaries that have been approved by the SURS board. In such cases, the executive director must provide a report of such execution to the board's investment committee. (Other contracts in excess of \$250,000 require the signature of the executive director, chief financial officer, and general counsel.) Statutory provisions regarding retired university employees returning to work are set out in rule, with "reemployed" defined as establishing a relationship with a System employer for at least 9 months. Both the employer and employee are required to notify the System of any employment that could result in cancellation or reduction of a retirement annuity. Persons claiming independent contractor status must file a form with the IRS seeking that determination, with the employee filing the resulting IRS determination or information letter with SURS. Provisions regarding SURS contributions for military service credit are amended for insurance purposes, and guidelines are established governing what constitutes a "full-time" student to whom survivor benefits may

be paid. The rule clarifies that under the statutory limitation of any salary increase to 20% or less for the period of time covered under the calculation of an employee's final rate of earnings, only basic compensation actually paid in exchange for services rendered is considered. A new section establishes protocols to pay the survivor insurance benefits of a child survivor to the surviving spouse if the child is in the care of the surviving spouse, and criteria for determining whether a child is "in the care of the surviving spouse" are included. Also, procedures for recovery of overpayments to a recipient are established.

Questions/requests for copies: Albert Lee, SURS, 1901 Fox Dr., Champaign IL 61820, 217/378-7516 or 217/378-8838.

STATE EMPLOYEES

The DEPARTMENT OF CENTRAL MANAGEMENT SERVICES adopted peremptory amendments, effective 9/24/08, to "Pay Plan" (80 Ill Adm Code 310; 32 Ill Reg 16591) implementing 4 memoranda of understanding between DCMS and the American Federation of State, County, and Municipal Employees (AFSCME). The rulemaking assigns the following positions to bargaining units: guard supervisor, pension and death benefit technician II, staff development technician II, and public service administrator, option 8D (Special License-Federal Communications Commission License/National Association of Business and Educational Radio). The Illinois Labor Relations Board did not exclude any positions within these categories from the bargaining unit.

Questions/requests for copies: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, Fax 217/524-4570, e-mail: CMS.PayPlan@Illinois.gov

Proposed Regulations

Springfield Metro Sanitary District's Spring Creek Sanitary Treatment Plant, along the Sangamon River downstream from Spring Creek to the Illinois River, and in the Illinois River 100 yards downstream from the mouth of the Sangamon River. PCB states that the rule will enable the District to accept a pretreated industrial effluent stream from Springfield's City Water, Light and Power generating station.

Requests for copies/comments through 11/24/08: John Therriault, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620. For more information: Marie Tipsord at the same address, 312/814-4925, e-mail: tipsordm@ipcb.state.il.us. Please reference docket R09-08.

INCOME TAX

The DEPARTMENT OF REVENUE proposed an amendment to "Income Tax" (86 Ill Adm Code 100; 32 Ill Reg 16309) concerning carryover of net losses to subsequent tax years after a taxpayer has been declared bankrupt or insolvent. The rulemaking implements Public Act 95-233 and states that when debts are discharged via bankruptcy, thereby reducing the amount of net loss that can be claimed on federal tax returns, the amount of net loss claimed on Illinois tax returns must be reduced by the same amount. Small busi-

nesses conducted as partnerships or corporations may be affected by this rulemaking, but sole proprietorships are not.

Questions/requests for copies/comments through 11/24/08: Paul Caselton, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/524-3951.

MOTORCYCLE RIDER SAFETY

The DEPARTMENT OF TRANSPORTATION proposed the repeal of rules titled "Illinois Cycle Training Safety Rules" (92 Ill Adm Code 455; 32 Ill Reg 16327) and proposed a new Part with the same title and Part number (92 Ill Adm Code 455; 32 Ill Reg 16245). The rulemaking updates requirements for motorcycle rider safety training programs, which are currently offered on a regional basis at four State universities that contract with DOT to offer the courses within a specified group of counties. The new Part incorporates by reference federal motor vehicle safety standards for motorcycle helmets, along with updated beginner and advanced rider safety instruction guides published by the Motorcycle Safety Foundation. The rulemaking establishes different requirements for beginner and advanced course instructors (current rule has only one set of instructor requirements) and clarifies that such courses may be offered on a credit

or non-credit basis by a university or community college, but no fee is to be charged other than a nominal registration fee to be refunded upon completion of the course. Other changes include updating boundaries for each regional instruction center; requiring students to attend 100% of the course in order to pass; decreasing the required student-instructor ratio from 9:1 to 6:1 and limiting class sizes to no more than 12 students per session; increasing insurance coverage requirements for the regional centers; assigning students unique identification numbers upon enrollment; requiring regional centers to obtain permission from DOT to use the program's official logo; and adding criteria for canceling riding instruction due to inclement weather. Other provisions have been carried over from the current rule. Those who may be affected by this rulemaking include non-profit community agencies that may be eligible to apply for contracts with DOT to offer the safety course, in addition to State universities and community colleges.

Questions/requests for copies/comments through 11/24/08: Catherine Allen, DOT, 3215 Executive Park Dr., 3rd Fl., Springfield IL 62794-9212, 217/785-3031.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's Thursday, October 16, 2008 meeting.

DEPARTMENT OF PUBLIC HEALTH

"Nursing Education Scholarships" (77 Ill Adm Code 597) proposed 5/2/08 (32 Ill Reg 7013)

LIQUOR CONTROL COMMISSION

"Beverage Alcohol Sellers and Servers Education and Training (BASSET) Programs" (77 Ill Adm Code 3500) proposed 7/11/08 (32 Ill Reg 9796)

ILLINOIS COMMERCE COMMISSION

"Service Quality and Customer Protection Applicable to Wireless Eligible Telecommunications Carriers" (83 Ill Adm Code 736) proposed 5/16/08 (32 Ill Reg 7517)

DEAF AND HARD OF HEARING COMMISSION

"Interpreter for the Deaf Licensure Act of 2007" (68 Ill Adm Code 1515) proposed 7/7/08 (32 Ill Reg 9432)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

Repeal of "Professional Boxing Act" (68 Ill Adm Code 1370) proposed 7/7/08 (32 Ill Reg 9457)

"Professional Boxing Act" (68 Ill Adm Code 1371) proposed 7/7/08 (32 Ill Reg 9489)

JCAR 2007 ANNUAL REPORT

The Joint Committee on Administrative Rules' 2007 annual report is now available. The report summarizes agency rulemaking, JCAR actions, and public act reviews in addition to legislative and judicial actions that affected rulemaking.

Copies of the 2007 Annual Report of the Joint Committee on Administrative Rules are available to the public. The volume may be ordered for \$2.07 (\$4.30 with postage included) by sending a check to JCAR at the address listed on the front of this newsletter. It is also available online at our website at www.ilga.gov/commission/jcar

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